No. 126, Original

In The

Supreme Court of the United States

STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

KANSAS' REPLY TO NEBRASKA'S COUNTERCLAIMS

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KANSAS' REPLY TO NEBRASKA'S COUNTERCLAIMS

The State of Kansas replies to the counterclaims contained in the Answer and Counterclaim of the State of Nebraska dated April 16, 1999 ("Counterclaims") as follows:

1. Kansas admits the allegations of Paragraph 1 of the Counterclaims, except that Kansas denies that Nebraska has shown that its Counterclaims are of sufficient seriousness and dignity to warrant exercise of the Court's original jurisdiction.

2. Paragraph 2 of the Counterclaims contains only assertions of law, which require no response.

3. Kansas denies each and every allegation of Paragraph 3 of the Counterclaims, except as follows: Kansas admits that the waters of the Republican River Basin were largely unappropriated in 1942; that federal reservoirs have contributed to the application of water to beneficial use in the Republican River Basin; and that the Republican River Compact fully apportioned the waters of the Republican River Basin.

4. Kansas denies each and every allegation of Paragraph 4 of the Counterclaims.

5. Paragraph 5 of the Counterclaims contains only assertions of law, which require no response.

6. With respect to the first sentence of Paragraph 6 of the Counterclaims, Kansas states that the Republican River Compact speaks for itself. Kansas denies the allegations of the second sentence of Paragraph 6.

7 Kansas denies each and every allegation of Paragraph 7 of the Counterclaims.

8. Kansas admits the allegations of the first sentence of Paragraph 8 of the Counterclaims, except that Kansas denies that the meeting of July 15, 1959 was the first annual meeting of the Republican River Compact Administration ("Compact Administration"). Kansas denies the allegations of the second sentence of Paragraph 8. The third sentence of Paragraph 8 contains only assertions of law, which require no response. Kansas denies the allegations of the fourth sentence of Paragraph 8 and alleges that the First Annual Report states that the Compact Administration established a Committee on Procedure for Computation of Annual Virgin Water Supply on November 19, 1959, which committee was instructed to prepare a separate report with respect to each of the drainage basins set out in Article III of the Republican River Compact.

9. Kansas denies the allegations of the first sentence of Paragraph 9 of the Counterclaims and alleges that the Annual Reports of the Compact Administration state that the Compact Administration accepted Formulas for the Computation of Annual Virgin Water Supply, Republican River Basin, on April 4, 1961; that the Compact Administration adopted Formulas for the Computation of Annual Consumptive Use, Republican River Basin, on April 27, 1964; that the Compact Administration revised the Formulas for the Computation of Virgin Water Supply and the Formulas for the Computation of Annual Consumptive Use on May 26, 1970; that the Compact Administration adopted revised Formulas for the Computation of Annual Virgin Water Supply and Consumptive Use,

Republican River Compact Basin, on August 19, 1982; and that the Compact Administration amended the Formulas for the Computation of Annual Virgin Water Supply and Consumptive Use on July 21, 1989. Kansas denies the allegations of the second sentence of Paragraph 9. Kansas admits that Appendices A and B to the Answer and Counterclaim of the State of Nebraska are true and accurate copies of the General Procedures of the Formulas for the Computation of Annual Virgin Water Supply and Consumptive Use, adopted in 1989 and 1982, respectively, by the Compact Administration.

10. Kansas denies each and every allegation of Paragraph 10 of the Counterclaims.

11. Kansas denies each and every allegation of Paragraph 11 of the Counterclaims.

12. Kansas denies each and every allegation of Paragraph 12 of the Counterclaims.

13. Kansas denies each and every allegation of Paragraph 13 of the Counterclaims.

14. Kansas admits the allegations of the first sentence of Paragraph 14 of the Counterclaims. Kansas is without sufficient information to determine the truth or falsity of the allegations of the second sentence of Paragraph 14, and therefore denies the same. Kansas denies each and every remaining allegation of Paragraph 14.

15. Paragraph 15 of the Counterclaims contains only assertions of law, which require no response.

16. In response to Paragraph 16 of the Counterclaims, Kansas incorporates by reference and restates its

responses to the allegations of Paragraphs 1 through 15 of the Counterclaims.

17. Paragraph 17 of the Counterclaims contains only assertions of law, which require no response.

18. Kansas denies each and every allegation of Paragraph 18 of the Counterclaims.

19. Kansas denies each and every allegation of Paragraph 19 of the Counterclaims.

20. In response to Paragraph 20 of the Counterclaims, Kansas incorporates by reference and restates its responses to the allegations of Paragraphs 1 through 15 of the Counterclaims.

21. Paragraph 21 of the Counterclaims contains only assertions of law, which require no response.

22. Kansas denies each and every allegation of Paragraph 22 of the Counterclaims.

23. Kansas denies each and every allegation of Paragraph 23 of the Counterclaims.

24. In response to Paragraph 24 of the Counterclaims, Kansas incorporates by reference and restates its responses to the allegations of Paragraphs 1 through 15 of the Counterclaims.

25. Kansas admits the allegations of Paragraph 25 of the Counterclaims.

26. Kansas denies each and every allegation of Paragraph 26 of the Counterclaims.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

27 The Counterclaims fail, in whole or in part, to state a claim of sufficient seriousness and dignity to warrant exercise of the Court's original jurisdiction.

SECOND AFFIRMATIVE DEFENSE

28. The Counterclaims fail to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

29. The Counterclaims are barred, in whole or in part, by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

30. The Counterclaims are barred, in whole or in part, by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

31. The Counterclaims are barred, in whole or in part, by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

32. The Counterclaims are barred, in whole or in part, by Nebraska's consent.

SEVENTH AFFIRMATIVE DEFENSE

33. The Counterclaims are barred, in whole or in part, by Kansas' performance.

EIGHTH AFFIRMATIVE DEFENSE

34. The Counterclaims are barred, in whole or in part, by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

35. The Counterclaims are barred, in whole or in part, by set-off.

TENTH AFFIRMATIVE DEFENSE

36. The Counterclaims are barred, in whole or in part, by the doctrine of election of remedies.

ELEVENTH AFFIRMATIVE DEFENSE

37. The Counterclaims are barred, in whole or in part, by Nebraska's failure to exhaust its administrative remedies.

TWELFTH AFFIRMATIVE DEFENSE

38. The Counterclaims are barred, in whole or in part, by Nebraska's failure to perform.

WHEREFORE, Kansas respectfully prays that the Court:

A. Dismiss the Counterclaims with prejudice;

B. Grant Kansas the relief requested in the Bill of Complaint;

C. Grant Kansas costs and expenses, including reasonable attorney fees; and

D. Grant Kansas such further relief as the Court deems just and proper.

Respectfully submitted,

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